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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-02-005-53122 Office: Nebraska Service Center Date: JAN 13 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel with fifty employees and a stated gross annual income in excess of $3.6 million. It seeks to employ the beneficiary as a hotel manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner failed to establish that the proffered position requires a bachelor's degree or its equivalent in a specific specialty. On appeal, counsel argues that the nature of the duties of the offered job is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel asserts that the proffered position should be considered professional in nature because of the complexity of the duties involved. Counsel cites the holdings reached in a number of decisions including, Matter of Sun , Int. Dec. 1816 (D.D. 1966), in support of these arguments.

Counsel's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a statement submitted subsequent to the filing of the I-129 petition, counsel described the duties of the offered position as follows:

1. Manages/directs human resources: 45%

   * Directs hiring and training of personnel[.]

* Establishes well-defined employee performance standards for personnel administration and assure constructive employee appraisals and evaluations.

* Develops/formulates/modify personnel policies and procedures.

* Delegates authority and assigns responsibilities to the department heads[.]

* Forms policies and coordinates grievance procedures to handle complaints[.]

* Interprets and administers the contract with respect to grievances, wages and salaries, employee welfare, health care, pensions, management practices and other contractual stipulations, [sic]

* Assign duties and shifts to workers and observes performance to ensure adherence to hotel policies and established operating procedures.

* Consult with employee and customer relations function to assure maximum manpower utilization and development[.]

2. Manages/directs financial resources: 35%

* Allocates funds, authorize expenditures[.]

* Responsible for fiscal operations such as budget planning, accounting and establishing rates for services[.]

* Supervise and administer the Marketing Budgets and assure compliance with budgetary guidelines and all regulatory agency [sic].

* Negotiates for improvement, and additions of equipments [sic] and furnitures [sic].

* Devise ways to ensure fair and equitable pay rates[.]

3. Marketing[:] 20%

* Reviews market analyses to determine customer needs, volume potential, price schedule and discount rates.

* Evaluate the success of marketing programs with division management and recommend adjustments and changes to achieve desired results;

* Review and evaluate competitive services services [sic], promotional programs and apparent marketing strategies;

* Gather data on competitors and analyze prices and methods of marketing.

* Monitor and analyze sales promotion results to determine cost effectiveness of promotion;

* Develop and recommend programs which will respond to current and projected competitive action; and

* Establish standards for advertising and publicity.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree. The duties of the offered job combine those of a general manager and a front office manager of a hotel, with those of a marketing manager. The duties of general and front office managers in a hotel are described at pages 70-71 of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition as follows:

> The *general manager*, for example, has overall responsibility for the operation of the hotel. Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and establishes standards for guest service, housekeeping, food quality, and banquet operations....
>
> *Front office managers* coordinate reservations and room assignments, as well as train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Front office managers often have authorization to adjust charges posted on a customer's bill.

A review of the Handbook at pages 70-72 finds no requirement of a baccalaureate degree in a specific specialty for employment as either a hotel general manager or a hotel front office manager. Community and junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel and restaurant management. In addition, technical schools, vocational and trade schools, and other academic institutions offer programs leading to formal recognition in hotel or restaurant management. Although postsecondary education is preferred, some hotel employees still advance to hotel management positions without education beyond high school.

The Handbook at pages 26-29, also finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. Most marketing, advertising, and public relations management positions are filled by promoting experienced staff or related professional or technical personnel, such as sales representatives, purchasing agents, buyers, product or brand specialists, advertising specialists, promotion specialists, and public relations specialists. Thus, it is concluded that the petitioner has not demonstrated that a baccalaureate degree in a specific specialty is required for employment in the offered position.

Counsel argues that a baccalaureate degree is required for employment in a number of managerial positions across a wide range of industries. Counsel contends that the Service has previously held that various managerial positions are specialty occupations,

and cites several decisions issued by the Administrative Appeals Unit (AAU), to support her contention. While the record contains newspaper and internet advertisements for numerous managerial positions, none of the advertisements are for a position within the hotel or hospitality industry. Furthermore, the unpublished AAU decisions cited by counsel have no precedential effect in this proceeding. See 8 C.F.R. 103.3(c). Thus, the petitioner has not submitted sufficient evidence to show that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in a specific specialty area in parallel positions.

While the petitioner has indicated that it currently employs another hotel manager who possesses a bachelor of science degree in hospitality management, no evidence has been submitted to corroborate that this individual holds the claimed degree. Consequently the petitioner has failed to demonstrate that it normally requires a degree or its equivalent for the proffered position.

Counsel asserts that the offered position can be considered professional in nature based upon the complexity of its duties. In support of this assertion, counsel cites the holdings reached in Matter of Sun, Int. Dec. 1816 (D.D. 1966), Hong Kong T.V. Video Program, Inc. v. Ilchert, 685 F. Supp. 712 (N.D. Cal. 1988), Matter of Perez, 12 I. & N. Dec. 148 (1967), Mindseye v. Ilchert, No. C-84-6199 SC (FJW) (N.D. Cal. 1987) (Mag.) aff'd No. C-84-6199 SC (N.D. Cal. 1987), and Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm. 1988). However, these decisions were concerned with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the cited decisions.

Counsel has indicated that the duties of the offered position will include complex tasks such as the delegation of authority and assignment of responsibilities to the department heads in the hotel and the interpretation and administration of labor contracts with respect to grievances, wages and salaries, employee welfare, health care, pensions, management practices, and other contractual stipulations. However, the petitioner has failed to submit any evidence that its hotel operations include multiple departments such as restaurant, banquet and catering, room service, housekeeping, customer relations, concierge, spa and exercise facilities, and physical plant and maintenance. The record does not contain any evidence that the petitioner employs either a large well-trained staff to work in each of these various departments or managers to oversee the staffs of such departments. In addition, the petitioner has failed to submit any evidence it has entered or

is currently engaged in labor contracts of any kind with individual workers, organized labor groups, or unions, which would necessitate the interpretation and administration of contractual terms relating to grievances, wages and salaries, employee welfare, health care, pensions, management practices, and other contractual stipulations. Consequently, the petitioner has failed to establish that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.